IN THE U.S. PATENT AND TRADEMARK OFFICE BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of

Martin MASTENBROEK — Conf. 9728

Application No. 10/584,215 — Group 3634

Filed July 24, 2006 — Examiner Colleen QUINN

SAFETY DEVICE FOR A FALL RESTRAINT

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Assistant Commissioner for Patents
P.O. Box 1450
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September 1, 2011

MAY IT PLEASE YOUR HONORS:

(i) **Real Party in Interest**

The real party of interest in this appeal is Kedge Holding B.V., Stephensonweg 2, 1406 KD Bussum, The Netherlands

(ii) **Related Appeals and Interferences**

None.

(iii) **Status of Claims**

Claims 38-57 are pending and stand rejected. Claims 1-37 were previously cancelled. Claims 44 and 52-57 are withdrawn from consideration. Claims 47-51 stand objected to as being dependent from rejected base claims. This appeal is taken from the final rejection of claims 38-43, 45 and 56.

(iv) **Status of Amendments**

All amendments have been entered.

(v) **Summary of Claimed Subject Matter**

Independent claim 38 is directed to a roof or other surface to which a safety device is attached.

Claim 38 recites an object (Fig. 1, element 10, Page 8, lines 7-18), comprising an exposed surface which is provided with a safety device for securing a personal fall protection (Fig. 1, elements 1, 11, page 6, line 22 through page 7, line 2, page 7, lines 4-19), directly or indirectly, said safety device comprises an anchoring means with an anchoring member for securing said personal fall protection (Fig. 1, element 1, page 6, line 22 through page 7, line 2), and said safety device is secured to said surface by means of fastening means which leaves said surface puncture free (Fig. 1, elements 10 and 11, Page 7, lines 17-19), said fastening means comprise a flexible fastening flap which extends laterally with respect to said anchoring means, and said flexible fastening flap is glued (page 7, lines 4-19), welded or otherwise locally bonded to said exposed surface of said object to render a firm and durable connection (page 7, lines 4-19).

Independent claim 45 is directed to a safety device for protection from a fall.

Claim 45 recites a safety device (Fig. 1, elements 1, 11, 22 and 25) for a personal fall protection to be applied on an object (Fig. 1, element 10, page 8, lines 7-18), comprising an

anchoring means with an anchoring member for securing said personal fall protection (Fig. 1, element 1, page 6, line 22 through page 7, line 2), directly or indirectly, and comprising a fastening means that leaves a surface puncture free (Fig. 1, elements 10 and 11, Page 7, lines 17-19) to render for a firm and reliable connection to said object (Fig. 1, elements 10 and 11, Page 7, lines 4-19), wherein said fastening means comprise a flexible fastening flap which is firmly connected to a substantially flat (Fig. 1, elements 10 and 11, Page 7, lines 4-19), substantially rigid body which comprises said anchoring means, and said flexible fastening flap extends laterally with respect to said body and is, during use, glued, welded or otherwise bonded to an exposed surface of said object (Fig. 1, elements 10 and 11, Page 7, lines 4-19, page 8, lines 7-18).

(vi) **Ground of Rejection to be Reviewed on Appeal**

The first issue on appeal is whether claims 38-43, 45 and 46 are anticipated, in the meaning of 35 USC § 102(b), by Zink, DE 20109056.

(vii) **Arguments**

(1) Arguments Concerning the First Ground of Rejection, Claims 38-43, 45 and 46 would not have been anticipated based on Zink.

On page 2 of the Office Action, with respect to "said flexible fastening flap is glued, welded or otherwise locally bonded to said exposed surface of said object to render a firm and durable connection," (emphasis added) as in claim 38, the Office asserts "wherein the anchoring member (5) is selected from the group of a threaded end, a fixing eyelet, a cable guide and a cable bushing (figures 1 & 2)."

However, Zink discusses a web from which straps extend which act as an anchoring member to which a personal fall restraint may be secured. The web is rolled out on a horizontal roof structure and then covered by a layer of gravel which acts as a load thereon.

Accordingly the safety device of Zink is based on a ballasted system, and is not a safety device that is physically bonded to the surface. There is no physical bond between the web and the surface, and as such the web of Zink cannot be considered to be a fastening flap which is glued, welded or otherwise bonded to the surface.

In reply to the above argument, the Examiner provides dictionary definition of "bond" and "fasten" and then states:

The applicants arguments are that the roofing

material/cover that covers the flap and secures it to the exposed surfaces is a bulk roof material or gravel and does not constitute a physical bond between the flap and the surface. However this is not persuasive since Zink clearly discloses that the "load from the bulk material and the teeth of the bulk material with the mesh as well as the soft fiber protection matt and/or drainage element as support lead to a resistance against the withdrawal" clearly demonstrating that there is a bond that holds the flap to the surface and prevents it from being pulled away.

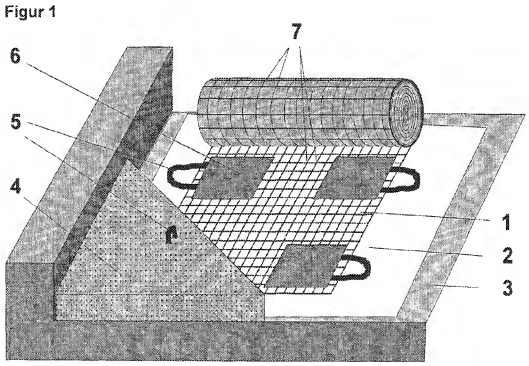
The applicant however believes that bonded must be interpreted in view of how one of ordinary skill in the art would read this wording in the context of the invention.

One of ordinary skill in the art of safety devices which in particular find a use on such surfaces such as roofs, considers a dead weight connection a completely different type of fastening as compared to a physical bond, such as a bolt fastening, gluing, welding or otherwise physically fastening to the surface.

Only with such a physical bond between two bodies any displacement of one of the bodies with respect to the other of the bodies is prevented. The absence of any physical bond between the two bodies with a dead weight connection however does allow the two bodies to be displaced particularly locally. E.g. in the case of Zinc the roof surface and net are loose with respect to each other, and even a relatively heavy dead weight cannot fully prevent the two bodies from being displaced relative to each other, particularly locally.

In this respect, claim 38 also requires the bond between the flexible flap and the object that will ***"render a firm and durable connection."*** (Emphasis added)

However, with respect to Zinc Figure 1, when upward



pressure is exerted on the loop 5, the bulk material 4 will get lifted, separating the fabric/netting 1 from the roof 3, even if only minimally. As such, there is no connection between the roof and the netting in Zinc. Nor, even if *arguendo* there is a connection, it is neither firm nor durable as the separation between the netting and roof, even if minimally, renders it otherwise.

For at least the reasons discussed above, claim 38 and the claims dependent therefrom are not anticipated by Zink.

Claim 45

Claim 45 recites in part "comprising a fastening means that leaves a surface puncture free ***to render for a firm and reliable connection to said object***, wherein said fastening means comprise a flexible fastening flap which ***is firmly connected to a substantially flat, substantially rigid body which comprises said anchoring means***, and said flexible fastening flap extends laterally with respect to said body and is, during use, ***glued, welded or otherwise bonded*** to an exposed surface of said object" (Emphasis added)

As discussed above with respect to claim 28, Zinc fails to disclose that the flexible fastening flap is glued, welded or otherwise bonded to an exposed surface of said object as understood by one of ordinary skill in the art.

As discussed above, when upward pressure is exerted on the loop 5, the bulk material 4 will get lifted, separating the fabric/netting 1 from the roof 3, even if only minimally.

As such there is no bond, especially a bond that renders a firm and reliable connection to said object.

Further, on page 5 of the Office Action, it is asserted that that the loop 5 is the anchoring means.

However, claim 45 requires a "substantially flat, substantially rigid body which comprises said anchoring means."

While Applicant acknowledges that the anchoring means 5 may be substantially flat, it cannot be considered to have a

substantially rigid body as it get rolled up as shown up in Figs. 1 and 2 of Zinc.

For at least the reasons discussed above, claim 45 and the claims dependent therefrom are not anticipated by Zinc.

Conclusion

Appellants respectfully urge that the rejections on appeal should not be maintained, and respectfully requests that these rejections be reversed.

The fee for the Appeal Brief in the amount of $540.00 is being paid online herewith by credit card.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future submissions, to charge any underpayment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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(viii) Claims Appendix

38. An object, comprising an exposed surface which is provided with a safety device for securing a personal fall protection, directly or indirectly, said safety device comprises an anchoring means with an anchoring member for securing said personal fall protection, and said safety device is secured to said surface by means of fastening means which leaves said surface puncture free, said fastening means comprise a flexible fastening flap which extends laterally with respect to said anchoring means, and said flexible fastening flap is glued, welded or otherwise locally bonded to said exposed surface of said object to render a firm and durable connection.

39. The object according to claim 38, wherein said exposed surface is provided with a flexible wall-covering material, and said flap likewise comprises a flexible wall-covering material.

40. The object according to claim 39, wherein said wall-covering material comprises a bituminous or plastic roof-covering material.

41. The object according to claim 38, wherein said flap extends laterally on either side of and around said anchoring member.

42. The object according to claim 38, wherein said anchoring means comprise a substantially rigid, substantially flat body, being provided with said anchoring member, and said flap extends laterally from said body, adhering to said surface.

43. The object according to claim 38, wherein said anchoring member is selected from a group consisting of a threaded end, a fixing eyelet, a cable guide and a cable bushing.

44. The object according to claim 38, wherein said anchoring member is connected by means of a damping construction to a remaining portion of the device.

45. A safety device for a personal fall protection to be applied on an object, comprising an anchoring means with an anchoring member for securing said personal fall protection, directly or indirectly, and comprising a fastening means that leaves a surface puncture free to render for a firm and reliable connection to said object, wherein said fastening means comprise a flexible fastening flap which is firmly connected to a substantially flat, substantially rigid body which comprises said anchoring means, and said flexible fastening flap extends laterally with respect to said body and is, during use, glued, welded or otherwise bonded to an exposed surface of said object.

46. The safety device according to claim 45, wherein said substantially rigid body is pre-assembled with said flexible fastening flap.

47. The safety device according to claim 45, wherein said substantially flat, rigid body comprises a substantially round flange-shaped member which is connected to a further substantially round flange-shaped member while enclosing said flap.

48. The safety device according to claim 47, wherein at least one of said substantially round flange-shaped member and said further substantially round flange-shaped member is provided at an inner side with attaching members which extend into said flap.

49. The safety device according to claim 47, wherein said substantially round flange-shaped member and said further substantially round flange-shaped member are provided at their centre with cup-shaped profiles which are nested into each other.

50. The safety device according to claim 49, wherein said substantially round flange-shaped member and said further substantially round flange-shaped member are mutually connected by means of a central screw bolt with nut, said screw bolt protrudes through said flap and is received together with said nut at least partly in the cups, and the anchoring member is connected, or at least connectable, to a free end of the screw bolt.

51. The safety device according to claim 50, wherein the anchoring member comprises a fixing eyelet which is connected releasably to the screw bolt.

52. The safety device according to claim 47, wherein at least one of said substantially flange-shaped member and said further substantially flange-shaped member is provided with perforations.

53. The safety device according to claim 47, wherein at least one of said substantially flange-shaped member and said further substantially flange-shaped member is provided with incisions running at least substantially radially from a centre.

54. The safety device according to claim 47, wherein a peripheral edge part of at least one of said substantially flange-shaped member and said further substantially flange-shaped member projects to a side remote from said flap.

55. A method of providing an object with a safety device for securing a personal fall protection, comprising:

providing a safety device having anchoring means with an anchoring member;

providing a flexible fastening flap, extending laterally with respect to said anchoring means and being unremovably connected thereto; and

gluing, welding or otherwise bonding said flexible flap locally to an exposed surface of said object.

56. The method according to claim 55, wherein said flexible fastening flap is unremovably pre-assembled to a substantially flat, substantially rigid body before applying the safety device to the object and said body is provided with said anchoring member.

57. The method according to claim 55 wherein an auxiliary flap of bituminous roof covering material is placed beforehand underneath said rigid body.

(ix) **Evidence Appendix**

None.

(x) **Related Proceedings Appendix**

None.